



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-H-C-

DATE: OCT. 22, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical clinic, seeks second preference immigrant classification for the Beneficiary as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established the beneficiary's eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, and a subsequent motion, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that the Beneficiary is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Beneficiary qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor⁴

The Petitioner seeks to employ the Beneficiary as a research manager and coordinator.⁵ The Beneficiary's job description listed in part 5 of the Form I-140 states she will "[m]aintain and process patient and research data, monitor study activities in compliance with protocol, [and] hire and supervise research staff."⁶ In addition, the record includes letters from the Petitioner's two lead researchers indicating that they intend to collaborate on future research with the Beneficiary.

In his initial letter, ██████████ founder and president of the Petitioner, asserts that he is currently conducting a clinical outcome study of Multiple Sclerosis (MS) and that his research goal is "to find cures for Multiple Sclerosis and other neurological illnesses."⁷ With respect to the Beneficiary's proposed work, ██████████ states: "[The Beneficiary] will create and coordinate appropriate system to process patients and research information linking them with the disease. She

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that the Petitioner earned a master of business administration degree from ██████████ in ██████████ in May 2013.

⁴ We note that the Director's decision did not identify or analyze the evidence provided for either this prong or the second prong of the *Dhanasar* framework.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we consider information about her position with the Petitioner to illustrate the capacity in which she intends to work.

⁶ The record includes earnings statements indicating that the Beneficiary recently started working for the Petitioner in April 2017. According to the Beneficiary's Form ETA-750B, Statement of Qualifications of Alien, she was previously employed by the Petitioner as a clinical manager from June 2013 until June 2014.

⁷ The record includes information from the Petitioner's website stating: "██████████ worked as a Research Specialist at the ██████████, California where ██████████ established a long-term collaboration with ██████████ of ██████████ to interpret myelin, multiple sclerosis, neurodegenerative and autoimmune disorders from the perspective of Tibetan Medicine. . . . ██████████ has published numerous articles on Tibetan medicine. His research paper on Multiple Sclerosis was published in 2007." In addition, the Petitioner presents a research article coauthored by ██████████ in *Annals of the New York Academy of Sciences* entitled '██████████'

will set up and maintain coordination and information exchange with research facilities in U.S. and abroad.” [REDACTED] subsequent letter contends that the Beneficiary “is an important person for our research team on Multiple Sclerosis” and that “along with [REDACTED] we have successfully presented our new way of treating Multiple Sclerosis at [REDACTED]. Our approach combines Tibetan Medicine with Functional Medicine and offers full understanding from the causes to the treatment methods.” [REDACTED] further explains that their “next step is to set up clinical trials for our new approach for treating Multiple Sclerosis.”

The Petitioner also presents a letter from [REDACTED] reiterating that she, the Beneficiary, and [REDACTED] are pursuing research aimed at improving treatment methods for MS. In addition, [REDACTED] indicates that the Beneficiary’s work as research coordinator involves guiding changes in patients’ environmental factors, organizing patients’ data, and recording the results from their research. She further states: “The purpose of our work is to achieve better understanding of how Tibetan methods work as treatment tools. We have shown that Tibetan herbs are superior to synthetic drugs in treating MS symptoms.” Finally, [REDACTED] contends that they intend “to further study these herbs” and “inform others about their advantages.” We find that the Beneficiary’s proposed clinical research aimed at investigating Tibetan herbs’ advantages in alleviating the effects of MS and advancing treatment methods for MS has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of the Beneficiary’s work. The record includes an article from Healthline.com discussing the prevalence of MS and the disease’s risk factors, symptoms, and drug treatment options. For example, the article notes that MS “is the most widespread disabling neurological condition of young adults” and that “more than 400,000 people in the United States and about 2.5 million people around the world have MS.” In addition to the aforementioned article, the record includes letters of support from [REDACTED] and [REDACTED] discussing the potential benefits of the Beneficiary’s proposed work. For instance, [REDACTED] asserts that their proposed research presents “the opportunity to make great advances in medicine and improve life [for] hundreds of thousands [of] people suffering from such a debilitating condition as Multiple Sclerosis.” In addition, the Petitioner has submitted documentation indicating that the benefit of Beneficiary’s proposed research has broader implications, as the results are disseminated to others in the field through professional journals and conferences. As the Petitioner has documented both the substantial merit and national importance of the Beneficiary’s proposed research, we find that she meets the first prong of the *Dhanasar* framework.⁸

⁸ With respect to the Beneficiary’s supervisory duties and patient processing work, while these endeavors have substantial merit, the record does not establish that her work in these areas would impact the MS research field or healthcare industry more broadly, as opposed to being limited to the Petitioner’s patients and staff. Accordingly, without sufficient documentary evidence of their broader impact, the Beneficiary’s supervisory and administrative duties do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

B. Well Positioned to Advance the Proposed Endeavor⁹

The second prong shifts the focus from the proposed endeavor to the Beneficiary. The record reflects that, at the time of filing, she was concurrently pursuing a master's degree in oriental medicine at [REDACTED] and working as an intern at that university's oriental medicine clinic.¹⁰ The Petitioner submitted documentation of the Beneficiary's academic credentials, professional certifications, medical training, and student awards for academic achievement and Russian language proficiency. The record also includes her curriculum vitae, recommendation letters from her educational institutions and employers, copies of [REDACTED] and [REDACTED] published and presented work, and online testimonials from two of [REDACTED] patients.¹¹ The Petitioner contends that the Beneficiary's educational credentials, medical training, work experience, and record of success in research render her well positioned to advance the proposed endeavor.¹² Upon review of this evidence, we find it does not establish that the Beneficiary is well positioned to advance the Petitioner's proposed research aimed at using Tibetan medicine to improve treatment of MS.¹³

In letters supporting the petition, several individuals discuss the Beneficiary's prior research activities.¹⁴ For example, [REDACTED] states that the Beneficiary has been part of his and [REDACTED] MS research since 2013 and that they "owe much our success to [the Beneficiary's] abilities as a research manager. She helped us to translate medical documents between different languages and compiled patients' data that are crucial to this research." Furthermore, [REDACTED] asserts that the Beneficiary "designed the system that allows us to store and classify the research materials and patient records." [REDACTED] also indicates that after presenting their research concerning a "new way of treating Multiple Sclerosis at the [REDACTED] in October 2017, he "received a call from [REDACTED] reflecting that university's "interest in cooperating with our research." We note that this presentation post-dates the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12). Regardless, the record does not include evidence from [REDACTED] to corroborate his claim.

⁹ We note that the Director's decision did not identify or analyze the evidence provided for this prong.

¹⁰ The Petitioner's initial submission included a letter from the director of [REDACTED] oriental medicine clinic stating the Beneficiary's work there involved interacting with patients, and managing and organizing the clinic and its documents. According to the Beneficiary's Form ETA-750B, she "received patients according to clinical protocol, coordinated doctors and intern students to their assigned patients, [and] followed doctor's prescriptions and prepared herbs accordingly."

¹¹ These two patients' testimonials discuss how [REDACTED] provided effective clinical treatment for their MS symptoms, but they do not mention the Beneficiary or her research projects.

¹² In addition to her master of business administration degree from [REDACTED] the Beneficiary received a bachelor's degree of dentistry from [REDACTED] (2010). The Petitioner does not sufficiently explain how the Beneficiary's education and training in business administration and dentistry render her well positioned to advance MS research.

¹³ Because the Beneficiary's proposed supervisory duties and patient processing work do not meet the first prong of the Dhanasar framework, our analysis under this prong will focus on whether she is well positioned to advance her proposed research.

¹⁴ While not all of the reference letters are mentioned in our analysis, all of them were thoroughly reviewed and considered.

In addition, [REDACTED] indicates that the Beneficiary “has the competency and years of handling our patients that have given us reviews” and that she “is the only other person who is familiar with this project” who “has sufficient skills and knowledge to be the research coordinator.” Finally, [REDACTED] director of the [REDACTED] states that the Beneficiary was a member of that organization’s clinical research team and that she “helped to complete the following project: ‘Public Health-Minor’s Oral Health,’” but does not discuss the significance of her work.

The record demonstrates that the Beneficiary has been involved in research during her career and has assisted [REDACTED] and [REDACTED] with their conference presentations. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual participating in a research project will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. Here, the Petitioner has not shown that the Beneficiary’s research has been frequently cited by independent researchers or otherwise served as an impetus for progress in the field, that it has affected treatment methods outside of the institutions where she has worked, or that it has generated substantial positive discourse in the broader medical community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in her area of research.

The evidence offered in the present matter is insufficient to show that the Beneficiary’s medical research constitutes a record of success or progress in her field, or has garnered degree of interest in her work from relevant parties, that would rise to the level of rendering her well positioned to advance her proposed endeavor aimed at improving Tibetan medicine treatment methods for MS patients. As the record is insufficient to demonstrate that the Beneficiary is well positioned to advance her proposed endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that the Beneficiary is eligible for a waiver due to her fluency in multiple languages, capability in translating Mongolian manuscripts, education, and the impracticality of labor certification, and because of the urgency of developing an effective treatment for those suffering from MS. However, as the Petitioner has not established that the Beneficiary is well positioned to advance her proposed endeavor as required by the second prong, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that it has not established the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of T-H-C-*, ID# 1668377 (AAO Oct. 22, 2018)